

SUBMISSION INSTRUCTION NO. 1A
PROCEDURAL REQUIREMENTS FOR
PERMITS-BY-RULE AND OTHER SPECIAL PERMITS

Developed by:

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Office of Waste Permitting and Compliance
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I. PERMITS-BY-RULE

- A. ***Applicability*** [§410.A.1., 9 VAC 20-81-10] Applicants for a permit to operate a compost facility; solid waste transfer station; materials recovery facility; waste to energy, thermal treatment, or incineration facility; waste pile; or centralized waste treatment facility may apply for a Permit-by-Rule in lieu of a full solid waste permit, as discussed in Submission Instruction No. 1.

B. Pre-Application Steps

1. **Pre-Application Meeting** – A pre-application meeting can be used to identify potential regulatory requirements that may be applicable to the project and any changes to the project because of statute changes that are not reflected in the regulations. This meeting is also an opportunity to discuss any applicable guidance that has been published or is in draft form; to identify out of the ordinary or innovative design features or unique circumstances that require special consideration; to determine the need to obtain variances, exemptions, approval of alternates, or functionally equivalent design issues, in addition to discussing required permit fee, timelines for permit processing and input with respect to potential challenges, pitfalls or constraints that may be associated with the project. If the applicant wishes to set up a pre-application meeting, please contact the DEQ Regional Office responsible for the proposed location of the facility.
2. **Public Participation Steps** - [Code of Virginia §10.1-1408.1; §410.A.3. and 450.B.4., 9VAC20-81-10] *{These steps do not apply to proposed materials recovery facilities or waste to energy, thermal treatment, or incineration facilities that received a permit from the Department based on the regulations promulgated by the State Air Pollution Control Board or State Water Control Board that required facility-specific public participation procedures.}* The public comment steps must be completed prior to initiating construction of the proposed facility and include publishing a notice once a week for two consecutive weeks in a major local newspaper of general circulation of the intent to construct and operate the facility eligible for a Permit-by-Rule; place a copy of supporting documentation in a location accessible to the public (such as a public library); holding a public meeting; and providing for a 30-day comment period. An example public notice is provided in [Attachment 1](#) to this Submission Instruction.

{If the application is for a transfer station owned/operated by the local government or public authority} In addition to the above steps, the public comments steps shall include the formation of a citizen's advisory group in accordance with Code of Virginia §10.1-1408.1. B.5.

C. Submission Requirements [§410.A.2., 9VAC20-81-10]

1. **Notice of Intent** [§410.A.2.a., 450.B., 9 VAC 20-81-10]
 - a. ***Cover Letter*** [§450.B.1., 9 VAC 20-81-10] Submit a letter to the Director describing the desired permit, the precise location of the proposed facility, and the

intended use of the facility. The applicant shall provide area and site locations maps as attachments to this letter. The site location map should identify both the property and facility boundaries.

- b. *Disclosure Statement* [§450.B.2., 9 VAC 20-81-10] Provide a signed and notarized DEQ Form DISC-01 and DEQ Form DISC-02 for each key personnel identified on DISC-01. These forms are available on the DEQ Website and accessible through the following links:

DISC-01: <http://www.deq.virginia.gov/waste/pdf/wstregs/formdisc01.pdf>

DISC-02: <http://www.deq.virginia.gov/waste/pdf/wstregs/formdisc02.pdf>

The Disclosure Statement should identify those key personnel who have obtained a Waste Management Facility Operators License as required by the Code of Virginia §10.1-1408.2.B., which states all solid waste management facilities shall be operated under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators. Information on training and licensing can be found on the Board's website:

http://www.dpor.virginia.gov/dporweb/was_main.cfm.

- c. *Local Government Certification* [§450.B.3., 9 VAC 20-81-10] Provide a signed DEQ Form SW-11-1. This form is available on the DEQ Website and accessible through the following link:
<http://www.deq.virginia.gov/export/sites/default/waste/pdf/forms/localcert.pdf>
 - d. *Demonstration of Need* [Code of Virginia §10.1-1408.1.D.1.; §450.B.8.a., 9 VAC 20-81-10] Provide information and supporting documentation, as applicable, for each item requested under § 9 VAC 20-81-450.B.8.a.(1), (2), (3), (4), (5), (6), (7), (8), and (9), and § 10.1-1408.1.D.1(i), (ii), (iii), (iv), (v), and (vi). If a section does not apply to the proposed solid waste management facility, indicate so with reasonable explanations.
2. Certification of Siting Standards [§410.A.2.b., 9 VAC 20-81-10] Provide a statement signed by the applicant that the facility meets the siting standards, as applicable, of 9 VAC 20-81-320. Should the facility not meet one or more of the applicable siting standards, the facility shall apply for a variance in accordance with Part VIII of the VSWMR (9 VAC 20-81-700 through 760).
 3. Certification of Consistency with the Local Solid Waste Management Plan [Code of Virginia §10.1-1408.1; §410.A.2.c., 9 VAC 20-81-10]
 4. Certification of Operations Manual [§410.A.2.d., 9 VAC 20-81-10] Provide a statement signed by the applicant that the facility has prepared an Operations Manual addressing the applicable standards of 9 VAC 20-81-340. This Operations Manual is to be maintained in the facility's operating record and updated as necessary. Additional information on the Operations Manual requirements can be found in [Waste Guidance Memo 01-2010: Implementation of New Operations Manual Requirements](#).

5. P.E. Certification [§410.A.2.e., 9 VAC 20-81-10] Provide a statement signed by a professional engineering licensed in the Commonwealth that:
 - a. The facility has been designed and constructed in accordance with the standards, as applicable, of 9 VAC 20-81-330; and
 - b. The facility has prepared a Closure Plan that meets the applicable standards of 9 VAC 20-81-360. This Closure Plan is to be maintained in the facility's operating record and updated as necessary.
6. Demonstration of Legal Control [§410.A.2.f., 9 VAC 20-81-10] Provide a copy of deed, lease, or other certification of ownership of the proposed site.
7. SCC Certification [§410.A.2.g. and 450.B.10., 9 VAC 20-81-10] Provide certification from the State Corporation Commission that the business entity pursuing the solid waste management permit is a valid entity, authorized to transact its business in Virginia. *{This certification is not required for those facilities owned solely by governmental units.}*
8. Closure Cost Estimates & Proof of Financial Responsibility [§410.A.2.h., 9 VAC 20-81-10]
 - a. *Closure Cost Estimate* – Either of the following methods may be used to calculate closure costs:
 - i. Process rate cited in the facility permit. If a process rate is referenced in the facility permit, the cost estimate may be based on one-half the process rate in tons per day (TPD) plus the total on-site storage capacity in tons for all waste materials (i.e. tires, materials proposed for beneficial use at an alternate facility, etc.) multiplied by \$70 per ton. The storage piece of the equation does not apply to materials excluded from the definition of solid waste as identified under §9 VAC 20-81-95. This is considered to incorporate the costs for all closure activities.

Closure Costs in dollars = [$\frac{1}{2}$ (Process rate, TPD) + (Storage Capacity, tons)] x \$70/ton
 - ii. Process rate not cited in the facility permit. In the event that the facility permit does not contain a daily process rate, the estimated maximum on-site storage may be determined on the basis of the dimensions of the tipping floor or waste pile. An estimated maximum on-site storage can be calculated using the area of the tipping floor or waste pile (in square feet) and an average waste pile height. This volume can be used to determine an estimated tonnage and cost.

Closure costs in dollars = (Area of tipping floor or waste pile - length (feet) x width (feet)) x (Height of waste pile (feet)) x (0.037 cy/cf) x (0.4 tons/cy) x (\$70/ton)

In the case of facilities that collect leachate, costs associated with the removal of leachate should be included in the closure cost estimate. The cost estimate should cover the cost of hauling and disposing of the maximum leachate storage capacity at the prevailing industrial rate for the appropriate wastewater treatment facility.

- b. *Proof of Financial Responsibility* – All facilities except for those owned and operated by State or Federal Agencies shall demonstrate financial assurance for closure, post-closure, and/or corrective action costs in accordance with the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70-10 et seq.). Once the closure plans are approved and prior to the acceptance of waste, the applicant must submit a financial assurance mechanism in the amount of the approved cost estimates. See Submission Instruction No. 9 for detailed instructions regarding the Financial Assurance Documentation to be submitted in this Attachment.
9. Results of Public Participation [§410.A.2.i, 410.A.3., and 450.B.4., 9 VAC 20-81-10] Provide a statement summarizing the steps taken by the applicant to seek public comments as described in Section I.B.2. above, in addition to a copy of the public notice and a record of the public meeting.
10. Facility Specific Information [§410.A.2.j., 9 VAC 20-81-10]
 - a. *Compost Facilities*: [§410.A.2.j.(1), 9 VAC 20-81-10] Provide a description of the type of facility (Type A or B) and the classification of materials that will be composted. Classifications shall adhere to 9 VAC 20-81-310.A.4.
 - b. *Waste Piles*: [§410.A.2.j.(2), 9 VAC 20-81-10] Provide a copy of the VPDES permit issued, if applicable.
 - c. *Waste to Energy, Thermal Treatment, or Incineration Facilities or Materials Recovery Facilities engaged in reclamation of petroleum contaminated materials*: [§410.A.2.j.(3), 9 VAC 20-81-10]
 - i. Provide a copy of the air permit issued in accordance with the regulations promulgated by the State Air Pollution Control Board; and
 - ii. Provide a description of how the requirements of 9 VAC 20-81-660 will be met.
11. Permit Application Fee [§410.A.2.k., 9 VAC 20-81-10] Submit a check, draft, or postal money order made payable to the Treasurer of Virginia for the required permit application fee in accordance with the Solid Waste Management Facility Permit Action Fees and Annual Fees regulation (9 VAC 20-90-10 et seq.) to DEQ Receipts Control, P.O. Box 1104, Richmond, Virginia 23218. Applications not accompanied by the proper fee or containing insufficient fees will not be considered complete and shall not be processed by the Department.

D. *Permit Processing & Issuance*

1. Permit-by-Rule Status [§410.A.2.k., 9 VAC 20-81-10] Once the documentation specified in Section I.C. has been received by the appropriate DEQ Regional Office, it will be reviewed for completeness and the Department shall respond within 30 days of receipt.
 - a. If the application is deemed administratively complete, the Department shall respond to the applicant indicating the proposed facility shall be deemed to operate under Permit-by-Rule status.
 - b. If the application is deemed administratively incomplete, the Department may request additional information or require the applicant to apply for a full permit as discussed in Submission Instruction No. 01.
2. Change of Ownership [§410.A.5., 9 VAC 20-81-10] Should the property owner change while the facility is still operational, the new owner shall notify the Department of the sale and submit the items discussed in Section I.C. above. Once Financial Assurance has been established by the new owner and a complete application has been submitted, the Department will deem the new owner to be operating under Permit-by-Rule status and the former owner will be released from its closure and financial responsibilities.
3. Loss of Permit-by-Rule Status [§410.A.7., 9 VAC 20-81-10] Should the Department find the facility in violation of any applicable siting, design and construction, or closure provisions of 9 VAC 20-81-320, 330, or 260, respectively, the owner or operator of the facility will be considered to be operating an unpermitted facility as defined under 9 VAC 20-81-45 and shall either obtain a new permit as required under Part V (9 VAC 20-81-400 *et seq.*) or close under Part III (9 VAC 20-81-100 *et seq.*) or IV (9 VAC 20-81-300 *et seq.*) as applicable.
4. Termination [§410.A.8., 9 VAC 20-81-10] The Department shall terminate a facility's permit-by-rule and require closure of the facility if any of the conditions of 9 VAC 20-81-410.A.8. are discovered.

E. *Permit-by-Rule Modifications* [§410.A.6., 9 VAC 20-81-10]

1. Submission Requirements
 - a. *Notice of Intent* [§450.B., 9 VAC 20-81-10] The facility shall submit a letter (1) stating the precise location and intended use of the facility; (2) describing the exact change to be made to the permit conditions and supporting documents referenced by the permit; (3) explaining why the modification is needed; and (4) attaching area and site location maps. *{If the modification is for an expansion or increase in capacity}* Provide an updated Demonstration of Need as discussed in Section I.C.1.d. of this Submission Instruction.

- b. *For Design Modifications* [§410.A.2. and 410.A.6., 9 VAC 20-81-10] Prior to initiating any design modifications, the applicant shall follow the public participation steps as outlined in Section I.B.2. With the Permit-by-Rule Modification application, the applicant shall provide (1) new certifications for items discussed in Sections I.C.2. through I.C.5. above, as applicable; (2) revised closure cost estimates and proof of financial responsibility if the modification affects closure costs; and (3) a summary of public participation effort as discussed in Section I.C.9.
 - c. *For Operational Modifications* [§410.A.2. and 410.A.6., 9 VAC 20-81-10] With the Permit-by-Rule Modification application, the applicant shall provide (1) new certifications for items discussed in Sections I.C.2. through I.C.5. above, as applicable; and (2) revised closure cost estimates and proof of financial responsibility if the modification affects closure costs.
 - d. *Permit Modification Fee* [§90., 9 VAC 20-90-10] Submit a check, draft, or postal money order made payable to the Treasurer of Virginia for the required permit modification fee in accordance with the Solid Waste Management Facility Permit Action Fees and Annual Fees regulation (9 VAC 20-90-10 et seq.) to DEQ Receipts Control, P.O. Box 1104, Richmond, Virginia 23218. Applications not accompanied by the proper fee or containing insufficient fees will not be considered complete and shall not be processed by the Department.
2. *Modification of Permit-by-Rule Status* [§410.A.2. and 410.A.6., 9 VAC 20-81-10] Permit-by-Rule modification applications will be reviewed in the same manner as a new application as discussed in Section I.D.1.

Attachment 1: Example Public Notice

PUBLIC PARTICIPATION FOR SOLID WASTE PERMIT-BY-RULE FACILITY

In accordance with Virginia Solid Waste Management regulations 9 VAC 20-81-410.A.3. and 9 VAC 20-81-450.B.4., citizens may comment on a permit-by-rule application for a {solid waste management facility type} to be located at {address or major intersection}.

COMMENT PERIOD: {date range}

NAME AND ADDRESS OF APPLICANT: {Facility name, address}. The facility is owned and operated by {Owner Name, Operator Name}.

PUPOSE OF NOTICE: The purpose of this notice is to allow the public to comment on a proposed {solid waste management facility type}, which will operate under a permit-by-rule to be issued by the Virginia Department of Environmental Quality after public comments are received.

PROJECT DESCRIPTION:

The facility is located {provide location description}. The facility will accept {list waste materials to be accepted/processed and add a general description of facility operations}.

TO REVIEW THE PERMIT APPLICATION: A copy of the permit-by-rule application document is available for review at the {location and address}.

HOW TO COMMENT: Written comments may be submitted at any time during the comment period {provide owner/operator contact info}. Comments must include the name and address of the person commenting as well as a brief statement regarding the interest of the person commenting and how the operation of the facility may affect the citizen. Oral and written comments will be received at a public meeting to be held at {time} on {date} at the {public hearing location and address}.